IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. (IB) No. 4596/NCLT/MB/2018
Under Section 9 of the I&B Code, 2016

In the matter of:
BMS Tradewings Private Limited
…Operational Creditor / Applicant
V/s
Agron India Limited
...Corporate Debtor / Respondent

Order Dated: 20th December 2019

Coram: Mr Rajesh Sharma, Hon'ble Member (Technical); Mr Bhaskara Pantula Mohan, Hon'ble Member (Judicial)

For the Applicant: Advocate Pushpa Tiwari i/b. SRS Legal
For the Respondent: Advocate Shaista Pathan, Advocate Sakina Moochalla and Mr Sadanand Pandey (Director of Corporate Debtor)

Per: Rajesh Sharma, Member (Technical)

ORDER

1. This is an application being C.P. (IB) No. 4596/NCLT/MB/2018 filed by **BMS Tradewings Private Limited,** the Operational Creditor / Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Agron India Limited,** Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**).

2. The application is filed claiming a total default of ₹46,58,567/- (Rupees Forty Six Lakh Fifty Eight Thousand Five Hundred Sixty Seven Only) including interest at 12% p.a. The application is filed by Mr Pankaj S. Somani, Director, of the Operational Creditor duly authorised to file this application vide Board Resolution dated

20.10.2018. The working for computation of claim amount is annexed to the application.

3. The Applicant submitted that it supplied steam coal and other types of coal to the Corporate Debtor as per the purchase orders raised by the Corporate Debtor. The purchase orders and the invoices for the materials supplied from December 2012 to July 2013 are annexed to the application.

4. The Applicant submitted that despite receiving the goods without any dispute, the Corporate Debtor failed to pay the due amount under the invoices within the credit period provided in the Purchase Orders.

5. The Applicant submitted that after regular follow up and persuasion by the Applicant, the Corporate Debtor vide its email dated 14.10.2013 sent to the Applicant, sought confirmation of Accounts for the financial year 2013-2014 and thereby admitted its liability of payment of ₹52,62,897/- (Rupees Fifty Two Lakh Sixty Two Thousand Eight Hundred Ninety Seven Only) to the Applicant. Further, the Corporate Debtor vide its letter dated 10.04.2014 acknowledged its outstanding liability and issued two Post Dated Cheques (PDCs) of ₹20,00,000/- (Rupees Twenty Lakh Only) & ₹20,29,652/- (Rupees Twenty Lakh Twenty Nine Thousand Six Hundred Fifty Two Only) to the Applicant against the outstanding amount. The Corporate Debtor vide the said letter also assured to make payment of ₹5,00,000/- (Rupees Five Lakh Only) to the Applicant by RTGS and keep replacing the security PDCs with remaining outstanding balance. The copy of email dated 14.10.2013 and letter dated 10.04.2014 is annexed to the application.

6. The Applicant submitted that the Corporate Debtor made payment of ₹3,00,000/- (Rupees Three Lakh Only) and replaced the PDC of ₹20,00,000/- with two new PDCs of ₹15,00,000/- (Rupees Fifteen Lakh Only) & ₹2,00,000/- (Rupees Two Lakh Only). The Applicant further submitted that it deposited the security PDCs in its Bank for encashment however, the said PCDs were returned dishonoured with

an endorsement "Funds Insufficient". Therefore, the Applicant filed Criminal Compliant bearing C. C. No. 10985/2015 under section 138 of Negotiable Instruments Act, 1881 against the Corporate Debtor. The copy of the Criminal Compliant and Cheque return memos are annexed to the application.

7. The Applicant submitted that, after filing of the Criminal Compliant the Corporate Debtor further made payment of ₹1,00,000/- (Rupees One Lakh Only) to the Applicant on 15.06.2016 towards part discharge of the outstanding liability. The Applicant has annexed its Bank Statement and Ledger Account of Corporate Debtor maintained in its Books of Accounts reflecting the deposit of ₹1,00,000/- by the Corporate Debtor on 15.06.2016. The Bank Certificate dated 15.07.2019 certifying the transfer of ₹1,00,000/- by the Corporate Debtor is also annexed to the application.

8. The Applicant submitted that, after 15.06.2016, despite several reminders and requests by the Applicant, the Corporate Debtor failed to pay the outstanding dues. Therefore, the Applicant issued Demand Notice dated 29.10.2018 to the Corporate Debtor under Section 8 of the I&B Code demanding payment of outstanding amount of ₹46,58,567/-. The Corporate Debtor did not reply to the said Demand Notice.

9. The Applicant filed present application on 11.12.2018. The Applicant was directed to serve the Court Notice to the Corporate Debtor vide our Order dated 14.02.2019. The Applicant has filed its Affidavit of Service. Thus, it is on record that the court notice was duly served upon the Corporate Debtor however, the Corporate Debtor after appearing on several dates and seeking time to file reply, chose not to file any objections in its defence.

10. The Counsel appearing on behalf of the Corporate Debtor and Director of Corporate Debtor present on the date of hearing submitted that the Corporate Debtor is hopeful of settling the matter and making payment to the Applicant. We have heard the parties and perused the records.

11. On perusal of the documents submitted by the Applicant, it is clear that Applicant has supplied goods of worth more than ₹1,00,000/- (Rupees One Lakh Only) of which the Corporate Debtor has failed to make payment. Therefore, operational debt of more than Rupees One Lakh is due and payable by the Corporate Debtor which is also admitted by the Corporate Debtor vide the confirmation of Accounts for the financial year 2013-2014 and vide its Letter dated 10.04.2014.

12. The Applicant, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I&B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The debt amount of more than Rupees One Lakh and default by the Corporate Debtor has also been established and there is no pre-existing dispute.

13. The application is also within limitation as the last payment was made by the Corporate Debtor to the Applicant on 15.06.2016.

14. The application is complete and has been filed under proper form. Copy of the Demand Notice dated 29.10.2018 along with postal track report reflecting due receipt of Notice by Corporate Debtor and Affidavit in compliance of section 9(3)(b) dated 12.07.2019 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed with this Bench.

15. The Applicant has not proposed the name of an insolvency resolution professional to act as Interim Resolution Professional and to carry out the functions as mentioned under I&B Code, 2016.

16. The application under sub-section (2) of Section 9 of I&B Code, 2016 is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the application filed under section 9 of the Insolvency

and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

This Application filed under Section 9 of I&B Code, 2016, presented by **BMS Tradewings Private Limited,** Operational Creditor / Applicant against **Agron India Limited**, Corporate Debtor for initiating corporate insolvency resolution process is **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

I. That this Bench as a result of this prohibits:
   a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
   b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
   c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
   d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

II. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to –
   (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator;

(b) a surety in a contract of guarantee to a corporate debtor.

IV. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of I&B Code.

VI. That this Bench appoints **Mr Sanjay Shrivastava,** a registered insolvency resolution professional having Registration Number **[IBBI/IPA-001/IP-P01528/2018-19/12425]** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

17. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-	**Sd/-**
RAJESH SHARMA	**BHASKARA PANTULA MOHAN**
Member (Technical)	Member (Judicial)

20th December 2019